

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

DALE BERNARD BEARD, JR.,

Plaintiff,

v.

**CIVIL ACTION NO.: 3:23-CV-193
(GROH)**

**DANIEL E. SMITH, individually, and
ADAM ALBAUGH, individually,**

Defendants.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Now before the Court is a Motion for Summary Judgment that was filed on October 25, 2024. ECF No. 26. The Court entered a Scheduling Order in this case on November 29, 2023. ECF No. 8. Therein, the Court ordered that dispositive motions must be filed by October 18, 2024. Id. The Scheduling Order further provides that “time limitations set forth above shall not be altered except as set forth in LR Civ P 16.01(f)” and “[u]nless authorized by the Court, the above dates and requirements of this Scheduling Order are **FINAL**. . . . [n]o untimely motions will be considered.” Id. at 8.


Local Rule 16.01(f)(2) provides, “stipulations to modify disclosure or discovery procedures or limitations will be valid and enforced if they are in writing, signed by the stipulating parties or their counsel, filed promptly and do not affect the trial date or other dates and deadlines specified in subparagraph (1).”

Subparagraph (1) provides, “[t]ime limits in the scheduling order, including limits concerning the joinder of other parties, amendment of pleadings, **filing of motions** and completion of discovery, and dates concerning pretrial conferences and trial, may be modified for cause **by order**. LR Civ P 16.01 (f)(1) (emphasis added). The Court recognizes that the parties filed a stipulation regarding the motions deadline in this case [ECF No. 23], but as this Court’s Scheduling Order and Local Rules make clear, the parties lacked the authority to unilaterally move the motions deadline. To continue that deadline, the parties needed to file a motion. Without an Order from this Court modifying the motions deadline, it remains unchanged from the Court’s Scheduling Order.

Accordingly, the Defendants’ Motion for Summary Judgment is summarily **DENIED** as untimely filed. ECF No. 26.

The Clerk of Court is **DIRECTED** to transmit copies of this Order to all counsel of record herein.

DATED: October 30, 2024


GINA M. GROH
UNITED STATES DISTRICT JUDGE